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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 10/710,569  | 07/21/2004  | PETER T. WU          | 19.0368               | 4568             |
| 23718   | 7590        | 07/26/2006           |                       | EXAMINER         |
| SCHLUMBERGER OILFIELD SERVICES<br>200 GILLINGHAM LANE<br>MD 200-9<br>SUGAR LAND, TX 77478 |             |                      | FULLER, ROBERT EDWARD |                  |
|   |             |                      | ART UNIT              | PAPER NUMBER     |
|   |             |                      | 3672                  |                  |

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/710,569             | WU, PETER T.        |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Robert E. Fuller       | 3672                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 21 July 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.<br>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20040721, 20041025</u> . | 6) <input type="checkbox"/> Other: _____   |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-5, 7, and 8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With regard to claim 1, there is no tangible result to the method. Claim 1 merely recites the steps of acquiring measurements, determining mud slowness, and comparing the mud slowness with a selected criterion. In order for the claim to be directed to statutory subject matter, something tangible must be done with the mud slowness data once it has been compared to the selected criterion.

With regard to claim 2, “generating a histogram” is not sufficient to denote a tangible result. The applicant must provide something more to assure that the histogram is being generated in the real world. For example, “generating a histogram on a computer monitor” would suffice.

With regard to claims 3-5, 7, and 8, these claims simply provide additional details with respect to the algorithm used to compute and compare the mud slowness. None of these claims add a tangible, real-word result to the method of claim 1.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims

are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,957,572 in view of Gouilloud (US 4,628,725). Claims 1-13 of '572 contain all of the limitations of the claims in the instant application, except for using the mud slowness to detect a kick in a wellbore.

Gouilloud discloses an apparatus and method for detecting a kick in a wellbore. Gouilloud teaches a method of detecting the presence of a gas in borehole fluid (i.e., a kick) using Stoneley waves. It also appears that a calculation of mud slowness or knowledge of the mud slowness is necessary in the calculation used to detect the kick in the wellbore (column 8, lines 1-24).

It would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have used the claimed system of '572 to detect a kick

in a wellbore, as taught by Gouilloud, in order to have provided a reliable automated system for preventing a disastrous blowout.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references further teach the state of the art with regard to methods of kick detection in wellbores.

US 2004/0003658 – Han et al.

US 4,208,906 – Roberts, Jr.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert E. Fuller whose telephone number is 571-272-0419. The examiner can normally be reached on Monday thru Friday from 8:00 AM - 5:30 PM. The examiner is normally out of the office every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Bagnell can be reached on 571-272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

07/18/06  
REF

  
DAVID BAGNELL  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600